

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 2.43.441 pertaining to the)	AMENDMENT
purchase of service credit through)	
trustee-to-trustee fund transfers)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On January 10, 2008, the Montana Public Employees' Retirement Board proposes to amend the above-stated rule.

2. The Montana Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Public Employee Retirement Administration no later than 5:00 p.m. on December 10, 2007, to advise us of the nature of the accommodation that you need. Please contact Angela Salvitti, Montana Public Employee Retirement Administration, 100 North Park Ave., Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail asalvitti@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

2.43.441 PURCHASE OF SERVICE THROUGH DIRECT TRUSTEE-TO-TRUSTEE TRANSFER OF FUNDS (1) Subject to (2), any time prior to retirement, a member who is statutorily eligible to do so may purchase service in the member's current retirement system through a rollover of funds from an eligible retirement plan account belonging to the member or a direct trustee-to-trustee transfer of funds from the member's 26 USC 403(b) tax-sheltered annuity or 26 USC 457 governmental plan.

(2) A direct trustee-to-trustee transfer of funds from the member's 26 USC 403(b) tax-sheltered annuity or 26 USC 457 governmental plan prior to the member's severance from employment can be made only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Internal Revenue Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the code does not apply by reason of section 415(k)(3) of the code. A purchase of service pursuant to 19-3-513, 19-5-409, 19-6-804, 19-7-804, 19-8-904, 19-9-411, or 19-13-405, MCA, is ~~not~~ a purchase of permissive service credit.

AUTH: 19-2-403, 19-2-1010, 19-3-2104, MCA

IMP: 19-2-704, 19-3-2113, 19-3-2115, MCA

STATEMENT OF REASONABLE NECESSITY: Section 19-2-704, MCA, gives the Public Employees' Retirement Board the authority to promulgate rules regarding the purchase of service credit in the various retirement systems it administers. Sections 19-3-513, 19-5-409, 19-6-804, 19-7-804, 19-8-904, 19-9-411, and 19-13-405, MCA, allow members to purchase service credit that is unrelated to the members' actual employment service. Recent changes in federal law now permit the purchase of that type of service credit on a pre-tax basis through a direct trustee-to-trustee transfer of funds from the member's 403(b) or 457 governmental plan. This purchase can occur without the member terminating employment or membership in the retirement plan. The ability to purchase service in this manner would be a great benefit to retirement plan members. However, the current rule reflects the previous federal law and prohibits purchasing service credit in this manner. Accordingly, this proposed rule amendment is required in order to allow the members to take advantage of the federal law changes and purchase service credit that is unrelated to actual service on a pre-tax basis through a direct trustee-to-trustee transfer of funds from the member's 403(b) or 457 governmental plan.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Roxanne Minnehan, Executive Director, Montana Public Employee Retirement Administration, 100 North Park Ave., Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail rminnehan@mt.gov and must be received no later than 5:00 p.m., December 19, 2007.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; fax (406) 444-5428; e-mail rminnehan@mt.gov. Written requests must be received no later than 5:00 p.m., December 19, 2007.

6. If the board receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The Montana Public Employee Retirement Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the

request. Such written request may be sent or delivered to the contact person in paragraph 4 above, or may be made by completing a request form at any rules hearing held by the Montana Public Employee Retirement Administration.

8. An electronic copy of this Proposal Notice is available through the Montana Public Employee Retirement Administration web site at <http://www.mpera.mt.gov/rules.asp>. The Montana Public Employee Retirement Administration strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Montana Public Employee Retirement Administration works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Scott A. Miller
Scott A. Miller, Legal Counsel and
Rule Reviewer

/s/ N. Jay Klawon
N. Jay Klawon, President
Public Employees' Retirement Board

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State November 13, 2007.